

TENNESSEE GENERAL ASSEMBLY  
FISCAL REVIEW COMMITTEE



FISCAL MEMORANDUM

HB 789 – SB 824

April 11, 2018

**SUMMARY OF ORIGINAL BILL:** Requires each institution of postsecondary and higher education to report the total number of contested cases involving allegations of student misconduct that the institution conducted during the immediate proceeding calendar year and the percentage of those cases for which the institution appointed administrative judges or hearing officers from among its employees to the Administrative Procedures Division in the Office of the Secretary of State (SOS).

Requires the SOS to report contested cases data pursuant to Tenn. Code Ann. § 49-8-115 and § 49-9-110 for the immediately preceding calendar year to the Government Operations Committee of the House of Representatives and the Senate, the Education Committee of the Senate, and the Education Administration and Planning Committee of the House of Representatives.

FISCAL IMPACT OF ORIGINAL BILL:

NOT SIGNIFICANT

**SUMMARY OF AMENDMENTS (006263, 017283):** Amendment 006263 deletes all language after the enacting clause. Creates a uniform process for the investigation and resolution of an allegation involving sexual violence or other criminal conduct that is made against a student or student group at a public institution of higher education in Tennessee.

Requires the SOS to grant a request by any public institution of postsecondary or higher education to have an administrative judge or hearing officer from the SOS hear a contested case.

Requires an administrative judge or hearing officer who hears contested cases referred to the SOS by public institutions involving allegations of sexual harassment, sexual assault, dating violence, domestic violence, or stalking, to annually participate in a training that satisfies the requirements of Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681), the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (20 U.S.C. § 1092(f)), and the federal regulations implementing those statutes, as amended.

Sets forth the process by which a public higher education institution shall proceed when such allegations are reported to a respective institution. Requires any information that is likely to identify the victim of an accused sexual offense or violent sexual offense to be treated as confidential and not be open for inspection by members of the public without the written consent of the victim.

HB 789 – SB 824

Prohibits a statement of a witness given in a student disciplinary proceeding from being valid in any civil or criminal trial, hearing, or proceeding without the informed and written consent of the witness, if the statement was made in a student disciplinary proceeding in which the witness did not have the active assistance of counsel. Establishes that this Act does not create a right for the witness to be represented at the expense of the public, including a public institution of higher education.

Requires an employee of a public institution of higher education who investigates sexual conduct to complete a training that satisfies the requirements of Title IX or a training developed and conducted by the Tennessee Law Enforcement Innovation Center for investigators who perform investigations of student sexual misconduct.

Requires an institution to provide a student accused of student misconduct with a written notice of the extent to which the institution may allow a licensed attorney or other advisor to represent or advise the student in the investigation within seven days of the institution's knowledge of the alleged student misconduct.

Requires an institution to adopt a policy requiring that the process of disciplining a student for student misconduct be carried out in a manner that is free from conflicts of interest with due process of disciplining a student for student misconduct. Prohibits an individual from personally serving more than one of the following roles: personal advisor of the student; investigator for the institution; representative of the institution who advocates on behalf of the institution to the hearing officer, other than as a witness; hearing officer, or decision maker on appeal.

Authorizes an attorney for the institution to provide legal advice to multiple institutional employees who serve in different roles in the process of disciplining a student for student misconduct. Authorizes an institution to provide an alleged victim of student misconduct with equivalent rights as a student accused of student misconduct in an investigation, student disciplinary proceeding, or appeal.

Requires any student enrolled at any public institution who is accused of a violation of the disciplinary conduct rules of the institution to have the right to be represented, at the student's expense, by a licensed attorney or non-attorney advocate who may fully participate during any disciplinary procedure or other procedure adopted and used by the institution regarding the alleged violation.

Prohibits the student or student organization from having the right to be represented by a licensed attorney or non-attorney advocate, if the institution has implemented a student honor court or similar proceedings for students or student organizations found to be in violation of student discipline and conduct which is staffed fully by students to address such violations, or for any allegation of academic dishonesty as defined by the institution.

Amendment 017283 adds and replaces language of amendment 006263 such that the substantive changes are as follows: (1) deletes the requirement that the SOS must grant a request by any public institution of postsecondary or higher education to have an administrative judge or hearing officer from the SOS to hear a contested case; (2) authorizes public institutions of higher education to appoint a person who meets certain requirements and qualifications as administrative judges and hearing officers to conduct such contested cases under the Uniform Administrative Procedures Act; (3) authorizes public institutions to make a request of the SOS to have a contested case heard by an administrative judge or hearing officer employed in the Office of the SOS; (4) establishes the effective date as upon becoming a law for promulgating rules, and for all other purposes, changes the effective date from January 1, 2018, to January 1, 2019; and (5) applies such changes to all contested cases that are requested on or after January 1, 2019.

## **FISCAL IMPACT OF BILL WITH PROPOSED AMENDMENTS:**

### **Unchanged from the original fiscal note.**

Assumptions for the bill as amended:

- Pursuant to Tenn. Code Ann. § 49-8-115, the Locally Governed Institutions (LGIs) and the community college system are authorized to appoint administrative judges and hearing officers from among their employees to conduct contested cases under the Uniform Administrative Procedures Act.
- Pursuant to Tenn. Code Ann. § 49-9-110, the campuses, institutes and other units of the University of Tennessee (UT) are authorized to appoint administrative judges and hearing officers from among their employees to conduct contested cases under the Uniform Administrative Procedures Act.
- The proposed legislation as amended would authorize all public institutions to appoint a person who meets certain requirements and qualifications as administrative judges and hearing officers to conduct such contested cases under the Uniform Administrative Procedures Act and authorize public institutions to make a request of the SOS to have a contested case heard by an administrative judge or hearing officer employed in the Office of the SOS.
- Any fiscal impact as a result of authorizing public institutions of higher education to appoint a person who meets certain requirements and qualifications as administrative judges and hearing officers to conduct such contested cases under the Uniform Administrative Procedures Act will be similar to current practice and is therefore estimated to be not significant.
- Based on the information provided by the SOS, any change in the number of contested cases heard by the SOS as a result of the proposed legislation is estimated to be not significant; therefore, any fiscal impact to the SOS is estimated to be not significant.
- Any fiscal impact as a result of the effective date changes is estimated to be not significant.

**CERTIFICATION:**

The information contained herein is true and correct to the best of my knowledge.

A handwritten signature in dark ink that reads "Krista M. Lee" followed by a small, stylized monogram or initials "RNC".

Krista M. Lee, Executive Director

/rbp